

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STATE OF NEW MEXICO *ex rel.*
State Engineer, *et al.*,

Plaintiffs, 69cv07941 MV/KK
v. Rio Chama Adjudication
ROMAN ARAGON, *et al.*, Section 3: Canjilon Creek
Defendants. Section 3: Rio Cebolla

ORDER DENYING MOTIONS FOR PRETRIAL ORDERS

THIS MATTER is before the Court on the State of New Mexico’s (“State”) Motion for for Entry of Proposed Scheduling and Pretrial Order in the Canjilon Creek Subsection of Section 3 of the Rio Chama Stream System, Doc. 11314, filed December 20, 2017 (“Canjilon Creek Motion”), and Motion for Entry of Proposed Scheduling and Pretrial Order in the Rio Cebolla Subsection of Section 3 of the Rio Chama Stream System, Doc. 11329, filed February 15, 2018 (“Rio Cebolla Motion”).

Canjilon Creek

The Asociación de Acéquias Norteñas de Rio Arriba (“Acéquias Norteñas”) and five member acéquias (collectively “Acéquias”) filed objections to the proposed priority dates and irrigation requirements for Section 3, Canjilon Creek. *See* Doc. 11043, filed August 22, 2014. The State’s proposed scheduling and pretrial order for resolving those objections notes that “there is a potential conflict of interest between the ditches, who propose a single, shared priority date, and the individual irrigators, who may or may not wish to give up their seniority between each other.” Doc. 11314-1 at 5. To avoid the conflict of interest, the proposed order directs the Acéquias Norteñas to identify each individual water user defendant who objects to the State’s

proposed priority dates, and requires each such defendant or his/her attorney to file an individual objection within 60 days of entry of the proposed order.

In their Response to the Canjilon Creek Order, the Acéquias note that they will need to confer with approximately 350 individual parciantes to confirm that no conflict of interest exists, which will require at least 180 days. *See* Doc. 11315 at 2, filed January 3, 2018 (“Canjilon Creek Response”). The Acéquias also note that with respect to the irrigation requirements, the State and the Acéquias Norteñas recently completed a successful resolution of that issue in another subsection. *See* Canjilon Creek Response at 3. The Acéquias believe that such a resolution and stipulation can be reached here, and the Acéquias Norteñas have directed their hydrologist to conduct the required survey in Canjilon. The hydrology survey in Canjilon will not be completed until mid-summer. The Acéquias request that no deadlines for discovery, pretrial disclosures or dispositive motions or other pretrial filings be set until after 180 days from the date of entry of the Court’s scheduling and pretrial order, and note that substantial portions of the pretrial work described in the proposed pretrial order may prove to be unnecessary. *See* Canjilon Creek Response at 7. The State did not file a reply opposing the 180-day schedule requested by the Acéquias.

Rio Cebolla

The Acéquias Norteñas and two member acéquias (collectively “Acéquias”) filed objections to the proposed irrigation requirements for Section 3, Rio Cebolla. *See* Doc. 11309, filed December 11, 2017. The State’s proposed scheduling and pretrial order for resolving those objections requires that the Acéquias file, within 60 days of entry of the pretrial order, a statement indicating which individual water right owners have authorized the Acéquias to act on their behalf and demonstrating that the Acéquias have obtained the approval of each affected

individual water right owner in support of the specific irrigation requirements proposed by the Acéquias. *See* Doc. 11329-1 at 8.

In their Response to the Rio Cebolla Order, the Acéquias state that if the Court requires the Acéquias to provide a statement regarding the authorization of each individual water right owner, that the deadlines in the pretrial order be delayed until that process is complete. *See* Rio Cebolla Response at 3. The Acéquias also state they believe a resolution of the irrigation requirements issues could be achieved by the end of this summer, and ask that the schedule entered by the Court accommodate sufficient time for them to complete the hydrology survey and resolve the irrigation requirements issues that proved successful in another subsection. The State did not file a reply opposing the Acéquias' requests.

Discussion

The Acéquias seek a 180-day delay in the deadlines in the proposed pretrial orders to allow them time to confer with the individual water rights owners and to conduct the hydrology survey/resolve the irrigation requirements issues. The State does not contest the length of or the need for the delay. Nor does the State contest the Acéquias' assertion that the irrigation requirements issues can be resolved by the end of this summer. The Court finds that entering the pretrial orders at this time would be premature and will deny the motions for entry of pretrial orders without prejudice. The State may file motions for entry of pretrial orders for Canjilon Creek and Rio Cebolla after the earlier of (i) September 3, 2018, or (ii) when the Acequias have conferred with the individual water rights owners and the State and Acequias have resolved the irrigation requirements issues.

IT IS ORDERED that:

- (i) the State of New Mexico's Motion for for Entry of Proposed Scheduling and Pretrial

Order in the Canjilon Creek Subsection of Section 3 of the Rio Chama Stream System, Doc. 11314, filed December 20, 2017, is **DENIED**; and

(ii) the State of New Mexico's Motion for Entry of Proposed Scheduling and Pretrial Order in the Rio Cebolla Subsection of Section 3 of the Rio Chama Stream System, Doc. 11329, filed February 15, 2018, is **DENIED**.


Kirtan Khalsa
KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE